THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.01.2009

+ RP 213/2007 in WP (C) 1211/2005

CITIBANK, N.A. ... Petitioner

- versus –

UNION OF INDIA & ANOTHER ... Respondents

Advocates who appeared in this case:
For the Petitioner : Mr A.N. Haksar, Sr Advocate with Ms Rashmi Virmani and Ms Mihira Sood
For the Respondents : Ms Monika Garg

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The Union of India has filed this review application seeking review of the order dated 19.04.2007. By virtue of an earlier order dated 23.03.2007, this court had directed the Union of India to take specific instructions as to whether, prior to 31.07.1995, foreign currency deposits could be made by individuals other than the NRI account holders in respect of the NRE accounts of such NRIs. The order dated 19.04.2007, which is sought to be reviewed, indicates that the learned counsel for the respondent (Union of India) had taken

instructions and she had stated that prior to 31.07.1995, foreign currency deposits could be made by individuals other than the NRE account holders in the NRE accounts of such NRIs. It is on the basis of this statement that this court directed that all proceedings pursuant to the show cause notice dated 25.02.2002 as also the show cause notice stood set aside. The show cause notice pertains to a period prior to 31.07.1995. Consequently, the writ petition was disposed of.

2. Now, this application has been filed in which the respondent (Union of India) is claiming that due to a communication gap, proper instructions had not been conveyed to the counsel and that the position was otherwise. A reference is sought to be made to the Exchange Control Manual, 1987, the Exchange Control Manual, 1993 and the Circular No.7 dated 31.07.1995 issued by the Reserve Bank of India. It is apparent from a reading of the Circular dated 31.07.1995 that authorized dealers have been advised to scrupulously follow the instructions given therein while permitting credits representing proceeds of foreign currency, bank notes and travellers cheques to NRE accounts and operations on these accounts by resident power of attorney holders. *Inter alia*, the instructions provide that the account should be opened by the non-resident account holder himself and not by the holder of power of attorney in India on behalf of a non-resident. It is also provided that credits representing proceeds of foreign

currency travellers cheques / foreign currency / bank notes may be allowed provided these are tendered to the authorized dealer maintaining the NRE account in person by the account holder himself. In addition, it was stipulated that in the case of travellers cheques, the same should be discharged by the account holder in the presence of the officials of the bank with whom the account is maintained. It is obvious that on and from the date of this circular, i.e., from 31.07.1995, no NRE account of an NRI could be credited with the proceeds of foreign currency travellers cheques / foreign currency / bank notes unless and until the same was tendered in person by the account holder himself. There is no dispute that on and after 31.07.1995, this was the position in law. It was the contention of the learned counsel for the petitioner that prior to this, there has been no circular or requirement clearly pointing out that deposits in the NRE accounts could be made by persons other than the NRE account holders themselves.

3. The learned counsel for the respondent referred to the Exchange Control Manual, 1987 and in particular to paragraph 29A.7 thereof which indicated that authorized dealers may allow operations on NRE accounts by residents in terms of power of attorney or other authority granted in the resident's favour by the non-resident account holder provided they are restricted to withdrawals for local payments. The learned counsel for the Union of India submitted that this indicated

that the only operations that were permissible to persons other than the account holder himself were in respect of withdrawals for local payments, subject to the conditions stipulated therein. A similar provision is found in the Exchange Control Manual of 1993 in paragraph 13B.7. In the light of the aforesaid paragraphs appearing in the Exchange Control Manual, 1987 and the Exchange Control Manual, 1993, the learned counsel for the Union of India submitted that the instructions given to her were incorrect and contrary to the position as indicated in the said paragraphs.

4. On the other hand, Mr Haksar, the learned senior counsel who appears for the writ petitioner and the non-applicant in this application, submitted that prior to 31.07.1995, there was no clear-cut stipulation that deposits / credits could not be made in the NRE accounts of NRI account holders in the absence of the account holders themselves. He submitted that the stipulations contained in the Exchange Control Manual, 1987 and the Exchange Control Manual, 1993 relate to operations pertaining to withdrawals and do not cover deposits. He submitted that it is for the first time that the deposits were expressly provided for by the circular of 31.07.1995. He also pointed out that paragraph 2 of the circular dated 31.07.1995 itself draws a distinction between credits and other operations on these accounts by resident power of attorney holders. This is apparent from the

expressions used in paragraph 2 of the said circular itself. He further submitted that the instructions with regard to permitting credits were stipulated for the first time in the circular dated 31.07.1995.

5. I agree with the submissions made by Mr Haksar and am of the view that the instructions given to the learned counsel at the time when the order dated 19.04.2007 was passed were correct and were in accord with what the circular dated 31.07.1995 as well as the paragraphs of the Exchange Control Manual, 1987 and the Exchange Control Manual, 1993 provided. In view of this, there is no basis whatsoever for seeking recall of the order dated 19.04.2007.

The application is dismissed.

BADAR DURREZ AHMED
(JUDGE)

January 16, 2009
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